

*City of Burien*

BURIEN PLANNING COMMISSION MEETING

January 12, 2010

7:00 p.m.

Third Floor Lobby, Burien City Hall

MINUTES

**Planning Commission Members Present:**

Joe Fitzgibbon, Jim Clingan, Janet Shull, Stacie Grage, Rebecca McInteer, Rachel Pizarro

**Absent:**

None

**Others Present:**

David Johanson, AICP, senior planner; Karen Stewart, AICP, senior planner, Reid Middleton, Inc.

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Chair Fitzgibbon called the meeting to order at 7:06p.m. At the call of the roll all commissioners were present.

**Agenda Confirmation**

Commissioner Shull moved to accept the agenda as presented; second was by Commissioner McInteer. Motion carried 6-0.

**Public Comment**

None

**Approval of Minutes**

Commissioner Shull moved to accept the minutes of the November 24, 2009, December 8, 2009, and December 15, 2009, meetings. Motion carried 6-0.

**Public Hearing**

*a. Shoreline Master Program Update*

David Johanson, AICP, senior planner, and Karen Stewart, AICP, from Reid Middleton, presented a summary of the presentation the commissioners heard at their Dec. 15<sup>th</sup> meeting. They reviewed the state law and goals behind shoreline master programs, the selection of the Shoreline Advisory Committee, and the work the committee did to develop the draft master program now before the Planning Commission. Mr. Johanson reminded commissioners that Burien's Shoreline Master Program ultimately will have to be accepted by the state Department of Ecology. He said the shoreline regulations will become Title 25 of the Burien Municipal Code (BMC) and the shoreline goals and policies will become an element of the City's Comprehensive Plan. He noted that the Shoreline Master Program will have to meet state guidelines as well as coordinate with the City's critical areas chapter (BMC 19.40) and the flood damage prevention code (BMC 15.55) dealing primarily with construction.

Mr. Johanson said one of the issues that came up repeatedly throughout the Shoreline Advisory Committee meetings was public access to shorelines. There are, he said, multiple access points to the

marine shoreline at parks and street ends; Lake Burien does not currently have public access. Another major issue that came up was how to deal with nonconforming structures within the buffers.

Mr. Johanson then reviewed the process to develop the draft shoreline master program update. The Shoreline Advisory Committee was made up of 10 residents, five at-large members and five technical positions, for a total of 20. He emphasized that now is the time for public input on the draft program. The Planning Commission is conducting the first of several public hearings on the draft program; the City Council and the state Department of Ecology also will be conducting hearings. The public comments, he said, make the document better. He then distributed written comments from Jennifer and Mark Kropack, Mary M. McGarry, Chestine Edgar, Lee and Caroline Sanders, the state Department of Fish and Wildlife, and FutureWise. Don Warren then submitted his written comments, which were copied and distributed to the commissioners.

Chair Fitzgibbon then opened the public hearing at 7:32 p.m., reading the rules of order for the hearing.

A member of the audience asked at what points the draft program would be updated and resubmitted for public review. Chair Fitzgibbon said his understanding is that it can be amended at the Feb. 23<sup>rd</sup> meeting and also by the City Council, and looked to Mr. Johanson for confirmation. Mr. Johanson replied that that is the current schedule, but if the Planning Commission needs more time to work on the draft program, that is certainly workable.

The first to sign up to testify, **Charles I. Johnson, 3725 SW 171<sup>st</sup> St.**, said he would defer his testimony to a later meeting, adding that he's been a 76-year resident of Burien living on Three Tree Point and much of what he's seen in the draft program doesn't make sense to him.

**Chestine Edgar, 1811 SW 152<sup>nd</sup> St.**, said she'd like to make a correction to her written comments, changing "23" houses to "223" houses on the second page of her comments. She stated that she believes the draft program does not protect Lake Burien to the same extent that it protects the Puget Sound shoreline. She said the zoning for the lake is different than that for the marine shoreline and therefore the approximately 82 houses currently on the lake could be increased to 223 total based on the current RS-7,200 zoning designation, whereas the Puget Sound shoreline has disproportionately greater protection as a result of its RS-12,000 zoning designation. She said the potential increase in impervious surface resulting from further development of Lake Burien lots allows more damage to Lake Burien. She believes not addressing the minimum lot size around Lake Burien in the Shoreline Master Program will cause damage to the lake over the next 20 years. She said the lake should have been looked at as a critical area and a study done with best available science about what the minimum lot size ultimately would do to the lake. Additionally, the draft master program doesn't address the provision of a lake steward, which the lakefront property owners have had for years, nor does it provide for a gate should there be any private access.

**Bob Edgar, 12674 Shorewood Dr SW**, testified that the Planning Commission needs to address several issues in the current draft Shoreline Master Program including unequal protection of the marine shoreline vs. the lake shoreline. He stated that since freshwater habitats are in shorter supply on the planet than saltwater habitats they deserve greater, or at least equal, protection. He said that appears to be opposite of the intent of the draft program update. He said the lake is one of the major sources of fresh water for Miller Creek and plays a key role in Normandy Park's efforts to increase fish populations in the creek. He noted the 50-year history of lake stewardship by the shoreline homeowners. He said the lake is especially important to migratory water fowl since the Port of Seattle filled in wetlands to build the third runway. He said the increase in impervious surfaces from any further lakeshore development would result in greater stormwater runoff into the lake. He also stated his opposition to any public access to the lake, saying that such access would damage the lake.

**Kim Otto, 12237 2<sup>nd</sup> Ave S.**, stated that she's a professional land use planner and was a member of the Shoreline Advisory Committee. She said she feels the program update is well-designed to protect all

shorelines; she said she saw no evidence either from the consultants' studies or presented at the committee meetings to indicate that Lake Burien requires any greater protection than the marine shoreline. Regarding any possible future development on the lakeshore, she noted that the state Department of Ecology requires all storm water runoff be held on site rather than allowing it to drain into the lake. She encouraged the Planning Commission to base its decisions on the draft program update on fact, not on speculation and the fears of people who live on the lake. She also noted that the waters of the lake are not privately owned and are under the control of the Army Corps of Engineers, as are all navigable waters in the state of Washington. The land is privately owned, but the Shoreline Master Plan protects the water, not just the land, she said. She recommended increasing the buffer to 50 feet, saying it is a standard buffer and would not affect existing development unless someone wanted to increase the square footage of their house. She said she felt the committee did an excellent job and that it represented many different parts of the Burien community well. She urged the commission to look at the program update in terms of what is best for all of Burien, not just for the Lake Burien homeowners.

**Jennifer Kropack, 2681 SW 151<sup>st</sup> Pl.**, testified that she wants the wording in the draft program changed to allow the rebuilding of shorefront homes and decks stick-for-stick as they exist today no matter what the circumstances. She said she wants wording added to the policy section that the stick-for-stick rebuilding of shorefront homes and decks would not be seen as a rebuild or takeaway and does not harm the community's no-net-loss goal. She said she believes that restrictions on future development will ensure the principal of no net loss will be met. She stated the draft regulations shouldn't take away the personal property of waterfront owners in order for Burien to reach its goal of no net loss. She said Burien should get a lot of credit for restoring the Seahurst Park shoreline and should use that as leverage against restrictions on private property owners.

**Len Boscarine, 1600 SW 156<sup>th</sup> St.**, testified that everyone on the lake lives in fear of litigation, which is why they keep people away from the lake. In the 1950s there was open access to the lake via two vacant lots, resulting in public drunkenness at all hours, urination and defecation off homeowners' docks, trespassing on private beaches and leaving trash, and a teenager drowned in the lake. He said he objects the statement in the draft program about public access to shorelines as he believes it is targeted specifically at Lake Burien. He asked that if access to the lake is granted, the homeowners be given protections against lawsuits.

**John Ester, 16931 Maplewild Ave SW**, said he appreciates the amount of work and the effort of the Shoreline Advisory Committee in preparing the draft program update. He said he is opposed to public access to the lake and he believes the setbacks and buffers, particularly on the marine shoreline, will result in lots that are not buildable should an earthquake or other disaster decimate the shoreline houses and decks, which he considers a public taking of private property. He wants the property owners to be allowed to rebuild on the current footprint of their structures.

**Lee Moyer, 11917 8<sup>th</sup> Ave SW**, stated that he was a member of the Shoreline Advisory Committee and he urged the Planning Commission to adopt the draft Shoreline Management Program. He said a lot of points of view were expressed and discussed at the meetings and no one was 100 percent satisfied, but he thinks overall it's a good plan. He suggested that if the commission wants changes made to the draft program it should instruct the committee to reconvene and work on the changes with the various viewpoints represented. He said a few years ago the state Legislature passed a law that states that if public access is granted without fee for recreational uses there is no liability for unintentional injury to the users.

**Don Warren, 15702 13<sup>th</sup> Ave SW**, testified that he as a member of the Shoreline Advisory Committee and he had trouble getting his ideas built into the draft master program update. He said he has been the steward of Lake Burien for the past seven years and held offices in the lakeshore club. The lake is so small, he said, that it barely qualifies as a shoreline of the state, which is about 24 acres and the lake is about 42 acres, not even twice the size of the smallest lake that qualifies. Mr. Warren said he is opposed

to public access to the lake as he believes it would be detrimental to the lake habitat and the downstream waters. He said that because there is no public access, Lake Burien is the only lake known to King County's lake steward program to be without noxious weeds. He stated that the City will not benefit from providing public access, the lake will not benefit from providing public access, and the lake will be damaged by providing public access, therefore there is no rational reason to provide public access to the lake. He noted that he also was providing written comments to the Planning Commissioners. He suggested the Planning Commissioners remove everything relating to Lake Burien from the draft master program because he believes the property owners adequately protect the lake.

**Greg Anderson, PO Box 917, Seahurst**, said he is troubled about what he reads as view protection for others at the detriment of property owners. He said he doesn't understand why a city government would start saying who has what view, when height restrictions and side yard setbacks already protect some views. He said another issue troubling him is the buffers and setbacks that would make the majority of current waterfront houses nonconforming and very costly for the owners to get permits to rebuild if they are ever damaged or destroyed. He thinks the draft master program puts the shoreline owners in an awkward position because there just isn't much flat land to build on and the buffers and setbacks will make their land unbuildable.

Chair Fitzgibbon closed the public hearing at 8:05 p.m.

## **Old Business**

### *a. Discussion about Shoreline Master Program Update*

Mr. Johanson said staff will compile the oral and written comments and responses for the Planning Commission for further discussion. At this time staff would like to hear if there are any specific areas the commission would like to focus on or have staff prepare for future discussions.

Commissioner Clingan said he is concerned about people being able to rebuild stick-for-stick in the current footprint of their structures. He would like to be directed to the specific text in the draft program update that people are referring to when they testify that they would be prohibited from rebuilding stick-for-stick. Mr. Johanson said staff will be preparing a comment summary with references to specific sections and with clarification. The commission can adjust the language of the draft program to make it more easily understood.

Commissioner Shull said she would like to know what the existing regulations say about nonconformance and public access versus what the proposed regulations say.

Chair Fitzgibbon asked to be informed about to what extent buffers and other regulations already are covered by existing city code, such as the critical areas ordinance. He said he'd like to know what would be the practical effect of the changes.

Commissioner Pizarro said she would like to know if there is any information in the draft update or studies speaking to the impact to the environment of allowing public access. She said she understands that Lake Burien is public waters, but she is concerned about it being degraded by unregulated human intervention.

Commissioner Grage agreed, and wondered how other communities have dealt with public access to urban lakes.

Chair Fitzgibbon said he wonders what the actual affect of the language about providing public access will be; passing the language doesn't necessarily mean there will be public access, but what does the language actually mean for the city in the future.

Commissioner Pizarro said she'd like to know what public access would look like; is it a gated park?

Mr. Johanson said a lot of material has been gathered this evening, so it may be divided into separate topics over several meetings for the commissioners to work through.

Commissioner Pizarro asked if there is public demand for access to Lake Burien. Mr. Johanson responded that there are varying opinions; some members of the public want access, some do not want access granted.

Mr. Johanson reminded the commissioners that the Shoreline Master Program must be approved by the state Department of Ecology and staff knows that reducing the buffers to, say, 20 feet, will not meet DOE approval. There is some flexibility, but Burien must meet the state guidelines. Other cities have had their programs returned to them by DOE with instructions to better meet the guidelines. Staff has been coordinating with DOE to try to develop a draft program update that meets the guidelines to the best of Burien's ability.

Commissioner Pizarro asked for clarification or validation around the impact of lot size and the comparison between the lake shoreline and the marine shoreline.

Commissioner Shull said it was her understanding that the zoning was established in 1990. Mr. Johanson clarified that it was 1999, briefly summarizing the history of the zoning. Commissioner Shull asked how much redevelopment has occurred since the zoning was put in place. She stated that it is her understanding that zoning is not a part of the draft Shoreline Management Program; Mr. Johanson concurred that zoning was not a consideration when the update process began.

Commissioner Clingan asked if there is a deadline for the City Council to submit the Shoreline Master Program. Mr. Johanson said staff is talking with the Department of Ecology about some flexibility in the timing; the City's grant agreement expires in June this year, but perhaps if a little bit more time is needed the DOE might allow it.

### **New Business**

None

### **Planning Commission Communications**

Commissioner Pizarro said she will be out of town for the Feb. 9<sup>th</sup> commission meeting.

### **Director's Report**

None

### **Adjournment**

Commissioner Grage moved to adjourn; the meeting was adjourned at 8:27 p.m.

Approved: January 26, 2010

/s/ Joe Fitzgibbon, chair